IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 1009 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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RAMESHBHAI KACHARABHAI DANTANI
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR KL DAVE for the Petitioner
MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for Respondent No.1
MR PRATIK B BAROT for Respondent Nos.2, 3 and 4

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 21/02/2007

ORAL JUDGMENT

1. Present revision application is filed by the original complainant – Rameshbhai Kacharabhai Dantani – father of the deceased.

1.1 The petitioner – original complainant being aggrieved by judgment and order dated 24.05.2005 passed by the learned Sessions Judge, Mehsana in Sessions Case No.85 of 2005 is before this Court.

1.2 The learned Sessions Judge convicted accused Nos.1 – Dantani Dilipbhai Jivanbhai (husband of the deceased) and 2 – Dantani Parvatiben Jivanbhai Maganbhai (mother-in-law of the deceased) for an offence under Section 498-A read with Section 114 of the Indian Penal Code (“IPC”, for short) and then adjourned the case for hearing accused Nos.1 and 2 on the point of quantum of punishment.

1.3 The learned Sessions Judge was pleased to acquit all the accused, viz. Dantani Dilipbhai Jivanbhai (husband of the deceased), Dantani Parvatiben Jivanbhai Maganbhai (mother-in-law of the deceased) and Dantani Rekhaben Vijaybhai (wife of the elder brother of the husband of the deceased – 'Jethani') for offence under Section 306 read with Section 114 of IPC. The learned Sessions Judge also recorded acquittal of accused No.3 – Dantani Rekhaben Vijaybhai – Jethani for offence under Section 498-A read with Section 114 of IPC.

1.4 The learned Sessions Judge awarded 3 months S.I., fine of Rs.2,000/- (each) and in default 15 days S.I. to accused Nos.1 and 2 for offence under Section 498-A read

with Section 114 of IPC.

1.5 The learned Sessions Judge ordered that muddamal be destroyed after expiry of the appeal period. He ordered that accused Nos.1 and 2 be granted set of, of the period they have undergone. The learned Sessions Judge also ordered that if the accused are not required in any other offence, they shall be released forthwith from jail.

2. Mr.K.L.Dave, learned Advocate for the petitioner vehemently submitted that the learned Sessions Judge has erred in recording acquittal of all the accused for offence under Section 306 read with Section 114 of IPC and acquittal of accused No.3 for offence under Section 498-A read with Section 114 of IPC.

3. Learned Advocate Mr.Dave invited attention of the Court to an important aspect of the mater, viz. the matter was heard on 24.05.2005.

3.1 Record and Proceedings was called for. The same is perused. The Rojkam fortifies submission of learned Advocate Mr.Dave.

3.2 Learned Advocate Mr.Dave submitted that as many as 5 witnesses were examined on the same day, i.e. 24.05.2005, additional statement of all the accused was recorded on the same day, i.e. 24.05.2005, closing pursis was filed

by the learned Additional Public Prosecutor on the same day, i.e. 24.05.2005, the judgment was dictated on the same day, i.e. 24.05.2005, conviction was pronounced on the same day, i.e. 24.05.2005, the case was adjourned for hearing the accused for sentence on the same day, i.e. 24.05.2005, the accused were heard on the point of quantum of punishment on the same day, i.e. 24.05.2005, after hearing the accused on the point of quantum of punishment, sentence was awarded on the same day, i.e. 24.05.2005 and finally, the matter was concluded on that day, i.e. 24.05.2005.

4. At this juncture, Mr.H.L.Jani, learned Additional Public Prosecutor submitted that it is not before the Court as to how many other cases were dealt with by the learned Sessions Judge on the same day, i.e. 24.05.2005. The learned Additional Public Prosecutor submitted that a sessions trial, wherein the accused were charged with offence under Sections 498-A and 306 read with Section 114 of IPC, could not have been dealt with in a hot hurry in which it is dealt with by the learned Sessions Judge.

4.1 The learned Additional Public Prosecutor submitted that a very lenient approach is taken and only 3 months S.I. for offence under Section 498-A read with Section 114 of IPC is awarded. He submitted that for offence

under Section 498-A, the sentence prescribed is, “imprisonment for a term **which may extend to 3 years** and shall also be liable to fine”.

4.2 The learned Additional Public Prosecutor submitted that the learned Sessions Judge has not recorded any reason much less convincing reason for awarding the sentence of 3 months S.I. and fine of Rs.2,000/- (each). He submitted that as it appears from the record, the accused had remained in jail for a period of 3 months and possibly therefore, such light punishment is awarded. He submitted that had the learned Sessions Judge used the terminology, “period undergone”, it would have been apparent that he is taking too lenient approach. Hence, instead of using that phrase, the learned Sessions Judge awarded the sentence of, '3 months S.I.'. The learned Additional Public Prosecutor submitted that the order of the learned Sessions Judge that, 'the period of imprisonment be given set of to accused Nos.1 and 2', is also significant in this backdrop. The learned Additional Public Prosecutor submitted that besides, the other part of the order, 'if the accused are not required in any other offence, they shall be released forthwith', is also equally important.

5. The learned Additional Public Prosecutor also

invited attention of the Court to the fact that the learned Sessions Judge after discussing the evidence, recorded the conviction of accused Nos.1 and 2 only in the operative part of the order. He did not record acquittal of accused Nos.1, 2 and 3 for offence under Section 306 of IPC and acquittal of accused No.3 for offence under Section 498-A of IPC. The learned Sessions Judge adjourned the matter for hearing on the point of quantum of punishment and it is only after hearing them for quantum of punishment, he recorded remaining part, i.e. acquittal part of accused Nos.1, 2 and 3 for offence under Section read with Section 114 of IPC and acquittal of accused No.3 for offence under Section 498-A read with Section 114 of IPC. The learned Additional Public Prosecutor submitted that even if nothing turns on merit, due to this lapse on the part of the learned Sessions Judge, it does indicate that the learned Sessions Judge was in hot hurry to dispose of the matter of such serious nature.

6. Mr.Barot, learned Advocate for respondent Nos.2, 3 and 4 vehemently submitted that the learned Sessions Judge has not committed any error in recording acquittal, may be the sequence is not maintained in recording the, 'conviction', then 'the argument on the aspect of quantum of punishment', then 'order of acquittal' and finally the

'sentence'. He submitted that three witnesses have not given any specific instances of, 'Mahena Tona' (taunts) with regard to nature of taunts, time of taunts and the reason for such taunts. The learned Advocate invited attention of the Court to the discussion on this aspect in paragraph No.12 of the impugned 'judgment and order'. He submitted that no details are given by any of the witnesses and therefore, the learned Sessions Judge has rightly recorded the acquittal for offence under Section 306 read with Section 114 of IPC and acquittal of accused No.3 for offence under Section 498-A read with Section 114 of IPC.

7. Learned Advocate Mr.Barot relied upon a decision of the Hon'ble the Apex Court in the matter of **RAMESH KUMAR VS. STATE OF CHHATTISGARH**, reported in 2002 SCC (Cri) 1088. He submitted that the Hon'ble the Apex Court has held that, “while appreciating the evidence, the Court has to consider the exact meaning of the word, instigation'”. He submitted that the Hon'ble the Apex Court has held that the exact meaning of the term, 'instigation' is, 'there must be a reasonable certainty to incite the consequence'. The learned Advocate submitted that in the present case, there is no such material on record to come to the conclusion that there was 'instigation' to the deceased by the accused to

commit suicide and therefore, the acquittal is rightly recorded and the revision is required to be dismissed.

8. At this juncture, the learned Additional Public Prosecutor invited attention of the Court to paragraph No.10, 11 and 12 of the judgment of the Hon'ble the Apex Court. The same are reproduced for ready perusal:

> “10. Section 306 IPC provides that if any person commits suicide, whoever abets the commission of such suicide, shall be liable to be punished. The ingredients of abetment are set out in Section 107 of IPC which reads as under :-
> "107. Abetment of thing.- A person abets the doing of a thing, who-
> First.- Instigate any person to do that thing, or
> Secondly. - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
> Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing."
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> 11. There is no direct evidence adduced of the accused-appellant having abetted Seema into committing suicide. The prosecution has relied on Section 113A of Evidence Act which reads as under :-
> 113A. Presumption as to abetment of suicide by a married woman. - When the question is whether the commission of suicide by a woman had been abetted by her or any relative of her husband and it is shown

that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.
Explanation. - For the purpose of this Section, "cruelty" shall have the same meaning as in Section 498A of the Indian Penal Code.

12. This provision was introduced by Criminal law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four-corners of the matrimonial home and hence was not available to any one outside the occupants of the house. However still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113A shows that to attract applicability of Section 113A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the Court may presume that such suicide had been abetted by her husband or by such

relatives of her husband. The Parliament has chosen to sound a note of caution. Firstly the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have regard to 'all the other circumstances of the case'. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression -'The other circumstances of the case' used in Section 113A suggests the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase 'May presume' used in Section 113A is defined in Section 4 of the Evidence Act, which says- 'whenever it is provided by this Act that Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.'"

8.1 The learned Additional Public Prosecutor submitted that if the entire judgment of the learned Sessions Judge is perused, it is clear that the learned Sessions Judge was not mindful of Section 113A of the Evidence Act. He

submitted that, 'the legislature has provided that there has to be a presumption of abetment of suicide by a married woman'. He submitted that whenever there is presumption of this nature, it is for the accused to dislodge the same and convince the Court that there is no reason for drawing such presumption. The learned Additional Public Prosecutor submitted that in view of Section 113A of the Evidence Act, it was obligatory on the part of the learned Sessions Judge to record that, 'drawing of a presumption' is not warranted as there is no material to draw such presumption. He submitted that the Hon'ble the Apex Court in paragraph No.12 has in terms recorded that, 'this provision was introduced by Criminal law (Second) Amendment Act, 1983 with effect from 26-12-1983 **to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four-corners of the matrimonial home and hence was not available to any one outside the occupants of the house**'.

8.2 The learned Additional Public Prosecutor submitted that in the present case, P.W.No.3 – Rameshbhai Kacharabhai Dantani – father of the deceased, examined at Exh.11 has categorically stated that his daughter, who

was married before one and half year, during her visits disclosed that her husband, Jethani and mother-in-law all are taunting her. The learned Additional Public Prosecutor emphatically submitted that despite this clear evidence on the aspect of taunting, the learned Sessions Judge has committed an error in observing that, 'there are no details about the nature of taunts, time of taunts and the cause for taunting'. The learned Additional Public Prosecutor submitted that P.W.No.3 has deposed in terms that the taunting was to the effect that, 'the child in the womb of the deceased is not of her husband and that necessary medical examination will be required to be carried out'.

8.3 This particular sentence in the evidence of the father of the deceased – P.W.No.3 replies to all the three questions of the learned Sessions Judge, which the learned Sessions Judge has replied in negative. From the aforesaid sentence, it clear as to what type of taunts were made, time of taunts and the reason for taunts is also clear.

9. The learned Additional Public Prosecutor submitted that this aspect is discussed in paragraph No.12 of the judgment by the learned Sessions Judge, but then the learned Sessions Judge is guided by the reasons, which

are not germane to the facts of the case in recording the conclusions. He submitted that if, 'taunting about character' is not of serious nature, then what else could be so serious to instigate a woman to commit suicide.

10. At this juncture, Mr.Barot, learned Advocate for respondent Nos.2 to 4 submitted that the Court may not make any observations while remanding the matter for retrial because otherwise observations made by this Court may prejudice the case of respondent Nos.2 to 4. In view of the request by the learned Advocate for the accused, the Court restrains itself from discussing the matter further.

11. In view of the aforesaid discussion, the judgment and order of the learned Sessions Judge dated 24.05.2005 is hereby quashed and set aside. Sessions Case No.85 of 2005 is remanded for retrial in accordance with law.

11.1 Taking into consideration the age of the matter, the learned Sessions Judge is expected to give due priority to this Case. Record and Proceedings be sent forthwith to the Court of learned Sessions Judge, Mehsana. Revision Application is allowed. Rule is made absolute.

(RAVI R.TRIPATHI, J.)

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